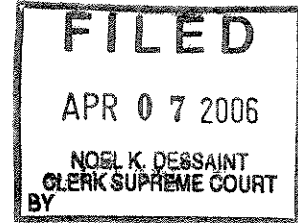


1 Richard E. Norling, #0001179
2 Mailing Address:
3 16427 N. Scottsdale Road, Suite 210
4 Scottsdale, Arizona 85254
5



6 BEFORE THE ARIZONA SUPREME COURT

7
8 PETITION TO AMEND RULES 32(c),
9 45 and 64(f), ARIZONA RULES OF
10 THE SUPREME COURT

Supreme Court No. R-05-0024³⁴

11
12 The undersigned member of the State Bar of Arizona and pursuant to
13 applicable rules hereby files a true copy of a letter dated February 22, 2006 from the
14 undersigned to the President of the State Bar of Arizona regarding the proposed
15 Amendments to the Arizona Supreme Court Rules 32, 45 and 64, the contents of
16 which are by this reference hereby incorporated herein as fully as if restated herein.

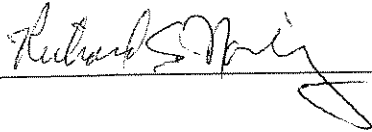
17 RESPECTFULLY SUBMITTED this 7th day of April, 2006.
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19

20 By: Richard E. Norling
21 Richard E. Norling
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1 ORIGINAL and seven copies
2 filed with the Clerk of the
3 Supreme Court of Arizona this
7th day of April, 2006.

4 COPY mailed this 7th day of
5 April, 2006, to

6 Robert B. Van Wyck
7 Chief Bar Counsel
8 State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

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Richard E. Norling
Scottsdale, Arizona 85258
Email: rnorling1@cox.net

February 22 2006

VIA FAX (602-265-4998) and U.S. Mail (3 pages)

Mrs. Helen Perry Grimwood
President, State Bar of Arizona
The Grimwood Law Firm, plc
3101 North Central Avenue, Suite 940
Phoenix, Arizona 85012

Re: Proposed amendments to rules 32, 45
and 64; Comments on

Dear President Grimwood:

This letter is written to convey my thoughts and suggestions on the proposed amendments to Supreme Court rules 32, 45 and 64. I learned of the proposals from my son's copy of the February, 2006, *Arizona Attorney*, as I, being in "active (over 70)" status, do not receive my own copy.* I have reviewed the publication, the web site of the State Bar, the proposed changes and the several versions of explanations of the reasoning behind the proposals. *(Late development: As I was preparing to transmit this letter, the firm called and said that I had received the March edition of *Arizona Attorney* yesterday....apparently the mailing list caught up....not bad...only took eight years!)

By way of background, as you and I have not met, I am a member of the "silent majority" of practicing attorneys, having been such since 1960, and did not and do not now participate in organized volunteerism, except for two terms in the discipline area as chairman of a Hearing Committee and an Administrative Committee. I retired from my law firm on December 31, 1997, and since this date have not engaged in the practice of law. My bar number is 1179. (Incidentally, the dates reflected on my computerized disciplinary record (clear) bear no relationship to reality—On January 23, 2006, I placed a request on the website in the form provided requesting telephone contact, but, alas, no contact to date hereof!)

Initially, I feel that, of all the legislation and rules in Arizona, the rules of the Supreme Court of Arizona should be the epitome of clarity and set an example for the legislature and the various agencies to follow. Using this as the keystone, I submit that the proposals do not comply in a variety of ways.

The clearly evident needed clarifications and my comments are:

- (1) The status of "inactive" is recognized in proposed r. 32(c)1, and r. 32 (c)4 describes the rights, duties and privileges of inactive members. Would it be clarifying to have a class of membership named "disability inactive" for those so impacted?


- (2) The proposal further precludes inactive members from practicing law in Arizona, or "*hold office or vote*". Logic tells me that the office and vote preclusions relate ONLY to State Bar activities....BUT if so, why not say so and avoid any arguments or questions????
- (3) The matter of dues for inactive members is fairly described as obfuscated. The web site "quick-read" chart shows proposed inactive dues as \$265 per annum, and retired at \$215 per annum, yet the President's letter of transmittal of the petition to the Supreme Court reflects that "the Bar further recommends, ultimately in 2009, retired dues shall be \$100" per annum, after yearly reductions in the intervening years, leaving retired fees in 2007 at \$180, and in 2008 at \$140. For some reason, no comparable adjustment to inactive fees is contemplated, so that in 2009, inactive dues are \$265 and retired dues are \$100. WHY???
- (4) Indeed, the motivation for the first assessment of fees to lawyers not actively practicing is a new concept, apparently based on the current economy and a desire to fund even more social programs. The Bar board seems to ignore the many years that the now non-practicing attorneys paid full dues while the majority of the board was still in undergraduate or law school, and left them an organization to assist in their practices. If this latter sounds biased and sarcastic, unfortunately there are many of the older lawyers who share the feeling.
- (5) The elimination of the MCLE exemption based solely on age is overdue. The MCLE seminars should be directed to recent changes in controlling law and procedure, and cease to be sites for niche experts to demonstrate their knowledge.
- (6) The professionalism course for "boot" lawyers could be amended somewhat and presented to non-practicing attorneys seeking to return to active status. For example, having been retired (inactive?) for over 8 years, I know generally of some changes, but am unfamiliar with the details. Were I to return to active status, I should be forced to become current.
- (7) I note that the transfer from retired status back to active status is proposed to require passing the bar exam again. This seems an overload, with a scintilla of nexus to client protection. Why, in lieu of taking the bar exam again, could not malpractice insurance with limits of at least \$2,000,000 be used to protect the client???? I assume this (client protection) was the underlying intent of the proposal and that the proposal was not predicated on anti-competitive considerations.
- (8) Page 2, Line 8 of the Petition justifies amendments to r 45 "to close a loophole that allowed members to jump from active to inactive status to avoid annual MCLE requirements". My education is certainly lacking on this point, as I was unaware of any such loophole. I suggest that should an attorney attempt to pass through the alleged loophole, the disciplinary section of the bar become involved, utilizing a "catch-all" clause similar to the military "conduct unbecoming an officer" (UCMJ s.133). This certainly has more relationship to the profession than trying to regulate the private conduct of attorneys...e.g."thou shall be a nice guy/gal, or face a disciplinary hearing....."

- (9) I would commend the use of defined words of art in the amendments - e.g. "Members" for active practitioners and those attorneys in the process of returning to active status from inactive or retired status and "members" for active, inactive and retired attorneys. This would seem to avoid the ambiguity suggested by the use of "members" in proposed rule 45. (See Lines 21, 23 and 10, Page 2 of Petition, with contra implication found in Lines 25 and 26).
- (10) Line 34, Page 1 of the Petition needs clarification to show that the preclusion applies only to action based upon admission in Arizona (from which the attorney has retired). If the proposal stands as initially written, it probably is in excess of the jurisdiction of the Supreme Court of Arizona, except to change the status of the Arizona retiree to disbarred, or some variant thereof when a retired Arizona attorney is elected dog catcher of Podunk, Iowa.
- (11) Line 5, Page 2 of the Petition is confusing. It reads in pertinent part "... .. immediately following resignation will be required to apply for admission and take the Bar exam... .. " Simply put, what are we trying to say??? Could it be " From and after the effective date of retirement or resignation, ... " ? Line 4, Page 2 is further confusing..... it reads in pertinent part: "Members who choose to resign will no longer by classified an resigned members of the Bar ... " Is this stating the obvious or did it mean resigned members will no longer by classified as retired members?

The foregoing seems to exhaust my comments on the existing draft of the proposals. I hope that this letter does not appear as "nitpicking", but rather as an attempt to achieve maximum clarity within the confines of the English language. You may notice that my residence address, telephone and fax numbers have been deleted from he subject letterhead. This was done intentionally in order to NOT confuse the records at the State Bar. My address of record for Bar mailings is the firm from which I retired..... The receptionist, the bookkeeper and my son take care of mail addressed to me.

From a personal standpoint, I understand that you are the daughter of the late Dave Perry. I knew Dave when he was counsel for one of the receiverships of a defunct Arizona savings and loan, as a fellow grad of Ohio State College of Law and from political functions in the Nixon-Goldwater-Kleindienst years. He was one of the "great guys" in the law, both on and off the bench. Please convey my regards to your mother....I remember meeting her at Trunk and Tusk meetings during the political activity years.

Very truly yours,


Richard E. Norling
State Bar of Arizona #1179